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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,123	03/15/2001	Victor Marcus Lewis	14219	2983

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Scully Scott Murphy & Presser  
400 Garden City Plaza  
Garden City, NY 11530

EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/744,123

Applicant(s)

LEWIS ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 , 4, 10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 2 and 10, the phrase "and the like" and claims 4 and 12, regarding the phrase "and other water activity controlling solutes" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like" and those encompassed by "and other water activity controlling solutes") thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. 5,723,167 in view of Rahman et al. 3,950,560 and Rahman et al. 4,109,026.

Lewis et al. disclose a process of making a dehydrated vegetable by dehydrating a vegetable piece (claim 10) to between 15 and 60% (claims 7 and 9), and compressing

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the vegetables as in claims 9 and 10 (col. 9, lines 20-30, col. 2, lines 49-55). Water activity controlling solutes as in claims 11 and 12 can be added to the vegetables before pressing (col. 5, lines 35-64 and col. 10, lines 20-30). Claim 7, 9 -12 differ from the reference in the steps of "optionally further dehydrating the product" and in the rehydration step. However, further drying the product is an optional step. It is seen that the product could have been rehydrated as claimed because the process has been shown. Therefore, it would have been obvious to make a product that would have been rehydrated as claimed.

The limitations of claims 1-4 have been discussed above and are obvious for those reasons.

Claim 5 requires that the vegetable product have a moisture content of from 2-12%. However, the reference to Lewis et al. disclose a lower moisture content of 5%. No patentable distinction is seen at this time in a difference of 2 % absent a showing of unobvious results in drying the product to a lower temperature. Therefore, it would have been obvious to dehydrate as claimed.

Claims 6, 8, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. applied to claim 1-5, 7, 9-12 above, and further in view of Rahman et al. '560 and Rahman et al. '026.

Claim 6 further requires that the vegetable product have an even lower moisture content of 4%, claim 8 requires that the compressed piece is further dehydrated to from 2-10% and claim 13 further requires that the compressed vegetable piece is dehydrated to from 2-12% moisture. The Rahman et al. references '560 and '260 disclose drying

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a compressed vegetable to less than 5%. By showing that dehydration is known.

Therefore, it would have been obvious to dehydrate to a lower degree using known methods of removing moisture.


Claim 14 further requires drying the vegetable piece to from 4-6%. Rahman et al. disclose drying cabbage to 5-8 % before rehydrating to 10-20% and then compressing (abstract). The step of rehydrating to 10-20% is not excluded from the reference. Therefore, it would have been obvious to dry to within the claimed level as shown by Rahman '026 in the process of Lewis et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 10-10-02

  
**HELEN PRATT**  
**PRIMARY EXAMINER**